

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

Rochester Drug Cooperative, Inc.

Debtor(s)

Case No.: 2–20–20230–PRW

Chapter: 11

Advisory Trust Group, LLC
as trustee of the RDC Liquidating Trust

Plaintiff(s)

v.

CHATTEM, INC.

Defendant(s)

A.P. No.: 2–22–02044–PRW

ORDER SETTING RULE 16 CONFERENCE

IT IS ORDERED, that pursuant to 11 U.S.C. § 105(d)(1) and Rule 16 FRCP/Rule 7016 FRBP, **each party is directed to appear in person through its attorney** at a scheduling and settlement conference ("Rule 16 Conference") regarding this Adversary Proceeding. The Rule 16 Conference will be conducted by the Honorable Paul R. Warren, U.S.B.J., at the **U.S. Bankruptcy Court, 100 State Street, Rochester, NY 14614** on:

August 23, 2022 at 11:30 AM.

THE FAILURE OF A PARTY OR ITS ATTORNEY TO APPEAR, OR BEING SUBSTANTIALLY UNPREPARED TO PARTICIPATE, OR NOT PARTICIPATING IN GOOD FAITH, OR THE FAILURE TO OBEY THIS ORDER, MAY RESULT IN THE ISSUANCE OF ORDERS AUTHORIZED BY RULE 16(f), INCLUDING THOSE SANCTIONS AUTHORIZED BY RULE 37(b)(2)(A)(ii)–(vii) FRCP, SUCH AS AN AWARD OF REASONABLE EXPENSES—INCLUDING ATTORNEY'S FEES—AGAINST, OR STRIKING PLEADINGS OF, THE PARTY THAT FAILS TO OBEY THIS ORDER.

IT IS FURTHER ORDERED, that the parties are not permitted to seek formal discovery from any source before the parties have conferred as required by Rule 26(f) FRCP.

IT IS FURTHER ORDERED, that the parties are to confer in accordance with Rule 26(f) FRCP **at least 21 days in advance of the Rule 16 Conference**. The parties must prepare a Discovery Plan, pursuant to Rule 26(f)(3) FRCP. The Plaintiff must file the Discovery Plan within 14 days following the parties' discovery conference. (A sample Discovery Plan is attached for convenience.)

IT IS FURTHER ORDERED, that the parties appear at the Rule 16 Conference with a realistic assessment of their case. Counsel must attend with appropriate authority to enter into stipulations, make admissions, and be prepared to candidly discuss:

- 1) the legal issues, claims, and defenses;
- 2) issues concerning jurisdiction of the Court;
- 3) discovery deemed necessary, the schedule for discovery, a discovery cut-off date and trial date, as detailed in the parties' Discovery Plan;

- 4) facts not in dispute, supported by evidence that would be admissible at trial, which can be stipulated as undisputed—with a proposed date for the submission of a written stipulation;
- 5) settlement of the litigation—the Court is prepared to actively assist in settlement discussions, unless a party objects to the Court's participation;
- 6) case management controls to eliminate wasteful discovery activities, control litigation costs, and expedite resolution of the action.

IT IS FURTHER ORDERED that, after issue is joined, no party shall serve or file a motion for summary judgment—or similar dispositive motion—prior to completion of the Rule 16 Conference. In order to avoid the burden on the Court and to minimize litigation costs to the parties, motions for summary judgment under Rule 56 FRCP/Rule 7056 FRBP, and any opposition to such motions, must comply with the following requirements, in addition to those specified in Rule 56 FRCP/Rule 7056 FRBP:

- 1) **Movant's Statement** – Upon any motion for summary judgment pursuant to Rule 56 FRCP, there must be annexed to the motion a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit the statement shall constitute grounds for denial of the motion.
- 2) **Opposing Statement** – Papers opposing a motion for summary judgment shall include a correspondingly numbered paragraph responding to each numbered paragraph in the statement of the moving party, and if necessary, additional paragraphs containing a separate, short, and concise statement of additional material facts as to which it is contended that there is a genuine issue to be tried.
- 3) Each numbered paragraph in the statement of material facts required to be served by the moving party shall be deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.
- 4) Each statement by the movant or opponent pursuant to subdivisions (1) or (2) of this Order, including each statement controverting any statement of material fact by a movant or opponent, must be followed by citation to evidence in a form that would be admissible, if offered at trial.
- 5) Parties are to be particularly mindful of Rule 56(c)(4) FRCP.

IT IS FURTHER ORDERED, that adjournment of the Rule 16 Conference will not be granted unless cause is demonstrated. In such circumstances, the consent of all parties and the approval of the Court is required. The party seeking an adjournment must contact the Courtroom Deputy [585-613-4214] **as soon as the need for an adjournment of the Rule 16 Conference becomes necessary.**

DATED: June 15, 2022
Rochester, New York

_____/s/_____
HON. PAUL R. WARREN
United States Bankruptcy Judge

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A.P. No.: 2–22–02044–PRW

v.

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**CERTIFICATION AND REPORT OF RULE 26(f) FRCP/RULE 7026 FRBP
CONFERENCE AND DISCOVERY PLAN**

Please fill in or check the appropriate blanks to certify completion of the Rule 7026 FRBP Attorney's Conference and provide the required information to the Court. Where the parties were unable to agree on a specific provision or item, please so note and attach any necessary explanation. Please note that this information will be used as a guideline by the Judge, in conducting the Rule 16 FRCP Conference.

1. **Certification Concerning Discovery Plan.** *(check one)*

☐ A discovery plan is needed or useful in this case and is outlined below.

☐ The parties cannot agree on a discovery plan. The attached sets forth the parties' disagreements and reasons for each party's position. *(attach an explanation to this document)*

2. **Certification of Conference.** Pursuant to Rule 26(f) FRCP/Rule 7026 FRBP, a meeting was held on

_____ (date) at _____ (place) or
by telephone [☐] *(check if applicable)* and was conducted by the undersigned counsel for the designated
parties in this adversary proceeding.

3. **Pre-Discovery Disclosures.** The information required by Rule 26(a)(1) FRCP and Rule 7026 FRBP
(check one) [☐] has been exchanged [☐] will be exchanged by _____ (date).

4. **Discovery Plan.** The parties jointly propose to the Court the following discovery plan:

a. All discovery will be completed by _____ (date).

[If applicable] Discovery on _____

(identify any issues requiring early discovery) will be completed by _____ (date).

Bankruptcy Case No.: 2-20-20230-PRW

- i. Maximum of _____ depositions by plaintiff(s) and _____ by defendant(s) (*ordinarily 3*)
[or _____ by *each* plaintiff and _____ by *each* defendant].

- ii. Other: (Describe) _____

5. **Dispositive Motions.** All potentially dispositive motions should be filed by _____ (date) [not to be brought before the Rule 16 Conference is completed by the Court].

6. **Settlement:**

- [] is likely.
[] is unlikely.
[] cannot be evaluated prior to _____ (date).
[] the parties consent to the Court's active participation in settlement discussions.

7. **Trial**. The case should be ready for trial by _____ (*date*) and should take _____ day(s).

8. All parties [] consent/ [] do not consent to this Court entering final judgment.

Plaintiff's Counsel
Date

Defendant's Counsel
Date

Plaintiff's Counsel
Date

Defendant's Counsel
Date